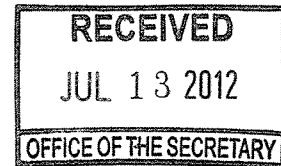


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-14684

In the Matter of

ANTHONY FIELDS, CPA
d/b/a ANTHONY FIELDS &
ASSOCIATES and d/b/a
PLATINUM SECURITIES
BROKERS,

Respondent.

JUDGE CAROL FOX FOELAK

THE DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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UNITED STATES OF AMERICA
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ANTHONY FIELDS, CPA
d/b/a ANTHONY FIELDS &
ASSOCIATES and d/b/a
PLATINUM SECURITIES
BROKERS,

Respondent.

JUDGE CAROL FOX FOELAK

THE DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

Pursuant to SEC Rule of Practice 340(b) and the Court's direction on May 22, 2012, the Division of Enforcement ("Division") submits its Post-Hearing Brief.

INTRODUCTION

The hearing in this matter not only resoundingly confirmed the factual predicate for a finding of liability but also made abundantly clear the need for significant sanctions to deter Respondent Anthony Fields ("Respondent" or "Fields") and others who would use social media and Internet platforms to perpetrate scams like prime bank securities frauds. Far from acknowledging the painfully obvious fact that he had no basis whatsoever to offer billions of dollars' worth of "bank guarantees" and "mid-term notes," Fields doubled down with nonsensical stories about mysterious tycoons, "contracts" that defy logic and phantom counterparties. Fields also proffered blatantly misleading hearing exhibits that merely served to

underscore his extreme recklessness at an absolute minimum. Whether the result of habitual dishonesty, arrogance, self-delusion or some combination of all those unfortunate traits, Fields' insistence that his ridiculous proffer somehow "proved" the existence of the bogus securities he peddled was astounding. Fields' refusal to make any concession to reality – indeed, his demonstrated willingness to spin ever more audacious falsehoods even under oath – shows that the sanctions assessed must include significant civil penalties and immediate revocation of his improper registration with the SEC as a supposed investment adviser. That is the only way to make any real impression on Fields and protect investors. As importantly, significant civil penalties are also needed to send a message to others who would attempt to make easy money through phony solicitations using the powerful and ubiquitous connective technologies now available through social media and Internet platforms. The message needs to be unmistakable that scams perpetrated using these technologies will not only be detected and charged, but will be meaningfully penalized even when halted before money is actually swindled from investors.

PROCEDURAL BACKGROUND

The Securities and Exchange Commission ("Commission") instituted this proceeding with an Order Instituting Proceedings ("OIP") on January 4, 2011, pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (Exchange Act), Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (Advisers Act), and Section 9(b) of the Investment Company Act of 1940 (Investment Company Act). The Division alleges that Respondent made fraudulent offers of fictitious securities through various forms of social media. OIP ¶¶ 1, 5-8. The Division also alleges that Fields, without being registered as a broker-dealer, has used social media platforms to offer to buy and sell fraudulent bank guarantees ("BGs") and mid-term notes ("MTNs") in exchange for

transaction-based compensation. OIP ¶¶ 1, 16-18. Fields, doing business as Anthony Fields & Associates (“AFA”) and Platinum Securities Brokers (“Platinum”), also reported false and materially misleading information to the Commission on AFA’s Form ADV, failed to maintain required books and records and to implement adequate compliance policies and procedures, and published false and materially misleading information on the websites of both AFA and Platinum. OIP ¶¶ 1-4, 9-15.

The Division further alleges that, by his conduct, Fields willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act by, in the offer or sale of securities, employing devices, schemes or artifices to defraud potential investors and engaging in transactions, practices or courses of business that operated or would operate as a fraud or deceit upon potential investors; that Fields willfully violated Section 15(a) of the Exchange Act by operating as an unregistered broker-dealer; willfully violated Section 203A of the Advisers Act by improperly registering with the Commission as an investment adviser; willfully violated Section 204 of the Advisers Act and Rules 204-2(a)(11) and 204-2(e)(3)(1) thereunder by failing to make and maintain required records relating to AFA’s advisory business and failing to establish procedures to preserve required electronic records, such as email, “so as to reasonably safeguard them from loss, alteration, or destruction” and to maintain those records in a manner that “permits easy location, access and retrieval of any particular record”; that Fields willfully violated Section 204A of the Advisers Act and Rule 204A-1 thereunder by failing to establish, maintain, and enforce a written code of ethics; willfully violated Sections 206(1) and 206(2) of the Advisers Act by employing devices, schemes or artifices to defraud clients or engaging in transactions, practices or courses of business that defrauded clients or prospective clients; that Fields willfully violated Section 206(4) of the Advisers Act and Rules 206(4)-1(a)(5) and 206(4)-7 thereunder by

disseminating false and misleading representations on AFA's website and in its Form ADV brochure regarding, among other things, its industry experience and expertise and its association with a "leading institutional broker dealer" that would provide AFA clients with direct access to a primary dealer and reduced trading commissions, and failing to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by AFA and its supervised persons; and that Fields willfully violated Section 207 of the Advisers Act by making untrue statements of a material fact in registration applications AFA filed with the Commission. OIP ¶¶ 19-26.

Fields filed an Answer which denied most of the Division's allegations. The Division and Fields both filed Pre-Hearing Briefs. The Court presided over a two-day hearing in Washington, DC on May 21 and May 22, 2012. The Division elicited testimony from Fields during its case. John Reed Stark ("Stark") testified as an expert witness in support in the Division's case, and was cross examined by Fields. Fields made a narrative statement in support of his defense and was cross examined by the Division. Numerous exhibits were admitted into evidence without objection. The Court has directed that the Division file its Proposed Findings of Fact and Post-Hearing Brief on July 13, 2012, that Fields file his response on July 27, 2012 and that the Division file its reply by August 3, 2012.¹

¹ Citations to the hearing transcript will be noted as "Tr. _" for the May 21, 2012 session and as "Tr. II _" for the May 22, 2012 session. Citations to exhibits offered by the Division and Respondent will be noted as "Div. Ex. _" and "Resp. Ex. _" respectively. The Division's Proposed Findings of Fact and Conclusions of Law will be cited as "Div. Pro. _."

FACTS

A. Respondent's "Bank Guarantee" and "Mid-Term Note" Message Postings on Social Media Platforms

This case arises as social media is fast becoming a powerful new tool in the hands of unscrupulous and reckless promoters seeking to perpetrate a new wave of the old fashioned prime bank securities fraud scheme. Investors are vulnerable to these scams because, for better or worse, many of them now consult social media for investment ideas or even advice. As stated by the SEC's Office of Investor Education and Advocacy:

U.S. retail investors are increasingly turning to social media, including Facebook, YouTube, Twitter, LinkedIn and other online networks for information about investing. Whether it be for research on particular stocks, background information on a broker-dealer or investment adviser, guidance on an overall investing strategy, up-to-date news, or to simply discuss the markets with others, social media has become a key tool for U.S. investors. While social media can provide many benefits, it also presents opportunities for fraudsters. Social media, and the Internet generally, offer a number of attributes criminals may find attractive. Social media lets fraudsters contact many different people at a relatively low cost. It is also easy to create a site, account, email, direct message, or webpage that looks and feels legitimate – and that feeling of legitimacy gives criminals a better chance to convince you to send them your money. See Investor Alert: Social Media and Investing – Avoiding Fraud, SEC Office of Investor Education and Advocacy (January 2012).

In this case, Fields saw other people's postings about BGs and MTNs on social media platforms and concluded that it would not be difficult to get investors to purchase them. Tr. 104-106. Fields thus "stumbled into the bank guarantee and mid-term note market" and then "just jumped right into it" (Div. Ex. 22, P. 37-38) by offering to sell and/or broker the sale of BGS and MTNs on various networking sites, including LinkedIn, without any basis to make such offers. LinkedIn is a business networking site for marketing and employment opportunities that reportedly has over 150 million members worldwide and over 1 million discussion groups

devoted to particular subject matter areas.² Individual members can create and name such discussion groups.³ Interested members may join and post public or private comments. There are many LinkedIn discussion groups that have catch phrases like “BGs,” “MTNs,” “private placement” and/or “high yield” in their names. Fields is a member of many such discussion groups. Tr. 153-154; Div. Ex. 24; and Div. Ex. 57.⁴ Fields’ LinkedIn “profile”⁵ identifies him as the owner of Platinum and the “Principal/CCO” of AFA, and refers LinkedIn members to his

²LinkedIn describes itself as “the world’s largest professional network on the Internet with more than 150 million members in over 200 countries and territories” that enables members “to create, manage and share their professional identity online, build and engage them to be more productive and successful” and “to search, connect and communicate with business contacts....” See 2012 Annual Report on Form 10K, LinkedIn Corporation, Item 1, Business, p.2, <http://investors.linkedin.com/secfiling.cfm?filingID=1193125-12-94556>. LinkedIn states that its members “did nearly 4.2 billion professionally-oriented searches on the platform in 2011 and are on pace to surpass 5.3 billion in 2012.” See <http://press.linkedin.com/about>.

³ LinkedIn discussion groups are forums for members to share information about particular topics and may be moderated by the member or members who started the group. See Tr. 111; see also LinkedIn Learning Center, <http://learn.linkedin.com/groups/>. Individual members can create and name such discussion groups. *Id.* Interested members may join and post public or private comments. *Id.* Official notice, pursuant to 17 C.F.R. § 201.323, should be taken of the fact that many LinkedIn discussion groups focus on topics such as employment opportunities, professional and career issue, academic and corporate alumni and investments. See LinkedIn Groups Directory, <http://www.linkedin.com/directory/groups/>.

⁴ These include discussion groups named “Alternative World (MTN’s, BG’s, PPP’s and Much More),” “BG’s Bank Guarantees and Commodities,” “Buyers and Sellers of Bank Debentures & Paper – Medium Term Notes, Bank Guarantees, SBLC’s, T-Strips,” “Medium Term Notes (MTN) Exchange,” “Private Broker Club (MTN’s, BG’s, SBLC’s, Bonds, PPP’s, Import/Export and Commodities,” “Real Deals for MTN’s and BG’s,” “The MTN Traders Group” and “Trade Platforms – Private Placement Programs (PPPs) – High Yield Investment Programs (HYIPs).” Div. Ex. 57.

⁵ LinkedIn states that “[a]t the core of our platform are our members, who create profiles that serve as their professional profiles and are accessible by any other member, as well as (unless a member chooses otherwise) anyone with an Internet connection.” See 2012 Annual Report on Form 10K, LinkedIn Corporation, Item 1, Business, p.2, <http://investors.linkedin.com/secfiling.cfm?filingID=1193125-12-94556>. Here, Fields chose to make his profile available to anyone with an Internet connection without restriction.

websites for those companies for additional information. Div. Exs. 57 and 57A. Fields' profile also asserts that his "specialties" include BGs and MTNs. *Id.*

The record shows that in approximately October – November, 2010, Fields began posting messages about BGs and MTNs on web pages used by members of LinkedIn discussion groups. *See* Tr. 115. Fields sent the following notice to the members of a LinkedIn discussion group named "Trade Platforms – Private Placement Programs (PPPs) – High Yield":

FRESH CUT BGS 40+1

Bank Guarantees, Cash Backed, Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS or Barclays, One (1) year and one day, Fresh Cut USD 500 Billion (USD 500,000,000,000.00) with Rolls and Extensions 40% or better plus 1% Commission Fee to be paid, to Buy Side and Sell side Consultants 50/50. First Tranche: 500M USDIf you are interested you can email for particulars at anthonyfieldscpa@att.net. *See* Tr. 123-130 and Div. Ex. 25, p. 2 & Div. Ex. 25A, p. 2.

Fields sent this additional notice to the members of the same LinkedIn discussion group:

FRESH CUT MTNS 30+1

Medium Term Notes, Cash Backed, Deutsche Bank, Credit Suisse, HSBC, JP Morgan Chase, BNP Paribas, UBS, RBS or Barclays, Ten (10) years and one (1) day. Fresh Cut 7.5% expected. USD 500 Billion (USD 500,000,000,000.00) with Rolls and Extensions. 30% or better plus 1% Commission Fee to be paid, to Buy Side and Sell side Consultants 50/50. First Tranche 500 M USD. All interested parties can email me for particulars at anthonyfieldscpa@att.net. *See* Tr. 145-148 and Div. Ex. 25, p. 4 & Div. Ex. 25A, p. 1.

Fields posted a notice to the members of another LinkedIn discussion group named "Real Deals for MTNs and BGs" stating that "[w]e are direct to seller of fresh cut BGs 40+1 and slightly seasoned BGs at 55+1, cash backed top ten world banks, 50B contracts." *See* Tr. 150-154 and Div. Ex. 24, pp. 1-2. In other postings, Fields offered "MTNS SLIGHTLY SEASONED 66+1 IF YOUR BUYER CAN PROVIDE MT 103.23 YOU CAN GET THE PAPER." *See* Tr. 150-154 and Div. Ex. 24, pp. 3. That discussion group had over one

thousand members. Tr. 153-154. Fields sent additional messages about BGs and MTNs to LinkedIn discussion group members but did not produce copies of those messages to the Division of Enforcement. Tr. 151-152. Fields has testified, however, that he used LinkedIn and other social media platforms to advertise that “I have access to a seller of bank guarantees and MTNs, fresh cut, slightly seasoned, at 7.5 interest rate, \$50B contracts, in rolls and extensions.” Div. Ex. 22, p. 126.

The record also shows that, whereas Fields used LinkedIn to offer to sell and/or broker the sale of BGs and MTNs, he used TradeKey to offer to buy and/or broker the purchase of such instruments. TradeKey is a “B2B” platform designed to enable small to medium-sized businesses around the world to network with one another. *See* www.tradekey.com. TradeKey reports having a membership base of over 5.7 million businesses and 9.5 million visits to the platform each month. *Id.* (“About TradeKey” pages)

On October 13, 2010, Fields, listing AFA as his company affiliation, posted the following on TradeKey:

Bank Guarantees

My name is Anthony Fields. I’m a CPA in the United States and I have a client interested in buying \$50 billion bank guarantees. If this is something that you are interested in please call me at [Fields’ phone number]. Tr. 207-214 and Div. Ex. 24 & Div. Ex. 24A, pp. 14-17.

On October 15, 2010, Fields posted another message on TradeKey asserting that “I have clients interested in sellers of BG’s and MTNs.” *See* Tr. 207-214; Div. Ex. 24, p. 19; and Div. Ex. 24A, p.6. In late October 2010, Fields solicited a London-based firm named Westminster International Corp. Ltd. (“Westminster”) to buy MTNs. Tr. 219-225 and Div. Ex. 24, p. 11. Fields spoke with Westminster’s U.S. representative and claimed to represent the owners of

MTNs issued by German and Swiss banks. Div. Ex. 24, p. 11. Fields proposed to arrange a sale of MTNs to Westminster. Div. Ex. 24, p. 11. Fields quickly followed up with an email telling Westminster's representative that "I spoke to the sellers rep [sic] yesterday and they are putting things in motion." Div. Ex. 24, p. 11. In reality, Fields did not represent any owners of MTNs. Tr. 223-224. Fields simply posted a message on a social media site in which he offered to broker the sale of "fifty billion Euros" worth of MTNs to a buyer specifically named as Westminster. Tr. 223-224. Fields subsequently exchanged emails with a self-described "consultant" who said she would "send [Fields] some opportunities," but no seller was ever identified. Div. Ex. 24, p. 5. Nonetheless, Fields was attempting to "broker a purchase and sale of MTNs." Tr. 225.

Further, the record shows that Fields expected to receive compensation if money changed hands based on his postings on social media platforms. Tr. 130. With respect to his posting on LinkedIn titled "FRESH CUT BGS 40+1," for example, Fields expected so-called "buy side" and "sell side" "consultants" to share a commission of one percent of the face value of the BGs being offered, or one percent of \$500 billion. Fields expected his personal share to be one third of one percent of the face value of the BGs being offered. Tr. 131, 142. Fields expected to receive similar compensation if money changed hands as a result of his LinkedIn postings about MTNs. Tr. 161-162.

There is ample evidence that Fields' postings on social media platforms attracted significant interest. For example, one member of a LinkedIn discussion group responded to Fields by writing that "I have a strong client wanting 1st tranche of 500M with rolls and extensions to 50B. I have the complete compliance package. Please send your contact info and details." Tr. 209 and Div. Ex. 24, p. 3. Another member asked that Fields "[p]lease forward to me at my email address the Complete Documents/information on behalf of your MTNs. I am

also in need of MTNs at 70% to [illegible] %. Please advise ASAP.” Div. Ex. 25, p. 4. Fields received between 20 and 40 similar responses to his postings about BGs and MTNs on LinkedIn. Tr. 115-116, 131-132, 209-211. Fields claims to have actually arranged purchase and sale contracts between parties that saw his “advertising” on LinkedIn, TradeKey or another platform named “E2 Commerce” to the effect “that I have access to a seller of bank guarantees and MTNs.” Div. Ex. 22, pp. 121-129 at 126 and Div. Ex. 13. In addition, Fields admits that he requested and obtained sensitive personal information from people who expressed interest in buying BGs and MTNs. Tr. 221-223. The information that Fields requested and obtained from potential customers included passport information and social security numbers. Tr. 221-223. Fields transmitted this sensitive personal information to third parties. Div. Ex. 24, pp. 8-9.

Fields remains interested in having dealings with “people who try to purchase these bank guarantees and midterm notes.” Tr. 119-120. Field has suspended advertising the availability of BGs and MTNs, but continues to discuss them with potential customers. Tr. 120. Fields states that his intention in the future “is to do what I started out to do and that is to buy and sell securities.” Tr. 120-121. Fields professes to believe that BGs and MTNs that trade freely in secondary markets “are in existence” and “are real.” Tr. II, 200. Fields does not acknowledge any regrets about his postings about BGs and MTNs on LinkedIn and TradeKey. Tr. II, 202.

B. Respondent Offered Fictional “Prime Bank” Securities

The record establishes that the BGs and MTNs that Fields offered in his postings on social media did not exist. Fields admits that he did not have \$500 billion worth of BGs – or any BGs at all -- at the time he was posting messages on LinkedIn about their availability on specified terms. Tr. 135-136. Fields has never bought or sold a BG. Tr. 158. Fields has never brokered the sale or purchase of an MTN. Tr. 158-159. In fact, Fields had never bought or sold a

security of any kind at the time of his postings about \$1 trillion worth of BGs and MTNs on social media platforms. Div. Ex. 22, pp. 30-31. Fields' only contacts with the various financial institutions that his postings named as the supposed issuers of the BGs was allegedly having once spoken on the phone with an HSBC director about BGs and his status as a checking account customer at JP Morgan Chase. Tr. 136-140, 142-143.

Fields not only made the critical admissions noted above but was unable to provide a plausible explanation of what he thought BGs and MTNs were. Fields asserted that a BG is "a secured note from the bank saying that they would pay in the event that the holder of the guarantee default[s]." Tr. 132. According to Fields, "if the bank issued me a bank guarantee and I reverted that bank guarantee to you, for example, or after I concluded my transaction where I needed that bank guarantee and you needed a bank guarantee and I sold it to you, then you would have to go through the due diligence by the bank in order for it to authorize me to forward it to you." Tr. 133. Fields further asserted that "you trade [BGs] on the market but you have to get the bank to endorse the trade" and that the seller of the BG would essentially "cosign" the buyer's application to the bank so that the buyer could use the purchased BG as a letter of credit for some specific commercial purpose. Tr. 133-135. It is immediately apparent that Fields' description of BGs in his hearing testimony bears no resemblance to the sales pitches he made on LinkedIn, which mentioned nothing about the need for banks to endorse BGs or for the buyer to submit a bank application that Fields would cosign. But even taking Fields' hearing testimony at face value, it makes no sense.

As Stark explained, instruments like irrevocable letters of credit ("LCs") do exist and are routinely used to guarantee payment in international commercial transactions between buyers and sellers. Tr. II, 38-44, 54-55. But LCs are not securitized and traded on secondary markets as

Fields posits. Id. It is unclear what Fields meant in asserting that the bank would “endorse” his sale of the BG on the secondary market or whether such endorsement was supposed to occur before or after sale. But whatever Fields meant, even he recognizes that no responsible bank would give a prospective new client the same terms given to an existing customer without conducting due diligence. Tr. 133. If all Fields was offering was his agreement to “cosign” a third party’s application for a new credit facility with a bank, that third party would have no need to buy Fields’ “used” LC from a prior transaction. The fee that Fields could charge for cosigning a client’s bank application (even assuming that Fields’ participation would add any value) presumably would be akin to a guarantor’s fee. The used LC itself would have no intrinsic or investment value. That is why there is no such thing as a market for used LCs and no such thing as BGs traded on secondary markets.

Another gap in Fields’ logic is that LC arrangements typically involve not only the bank that issues an LC to a buyer but also a bank that agrees to accept payment on behalf of the seller. Presumably, Fields’ client would have no relationship with the original seller or the original seller’s bank named in a used LC. But Fields’ client would have its own counterparty-seller that would need to be substituted as the beneficiary of the used LC. Fields has provided no explanation of what role, if any, the new seller and its bank are supposed to have in “endorsing” the sale of the used LC to its counterparty-buyer (Fields’ supposed client) on some secondary market and agreeing to accept that used LC as a payment guarantee. Nor has Fields explained how the need to negotiate the transfer of used LCs to new buyers and sellers on a case-by-case basis possibly could be consistent with the notion of a “market” in which billions of dollars’ worth of BGs are continuously traded.

Fields' explanation of the supposed market for MTNs is equally implausible. Fields asserted that "[a]n MTN is an actual bank note, a promissory note from the bank itself." Div. Ex. 22, p. 135. According to Fields, so-called "Tier 1 traders" are registered to buy "fresh cut" (meaning newly issued without CUSIP numbers) BGs and MTNs directly from the "top ten world banks." Tr. 104-110 and Div. Ex. 22 at 123.⁶ Once a Tier 1 trader has acquired BGs or MTNs, according to Fields, it can resell them to a buyer in a private transaction. Div. Ex. 22, pp. 124-125. According to Fields, the buyer can resell the BGs or MTNs at a discount to face value within one year and one day of their acquisition. Tr. 161. Fields claims to have been instrumental in arranging purchase and sale contracts between Tier 1 traders and buyers of BGs and MTNs. Div. Ex. 22, p. 127. Those claims are not credible. For example, Fields claims to have arranged a €500 billion BG purchase and sale contract between a Tier 1 trader named "Henderson Investment Funds Limited" and a buyer named "W&F Investment Holdings Ltd." Div. Ex. 22, pp. 121-122. Fields claims to have accomplished this entirely over the telephone without ever meeting the parties. Div. Ex. 22, 128-129. As of his investigative testimony in June 2011, Fields claimed to be expecting imminent payments of millions of dollars for his part in this and similar transactions. Div. Ex. 22, p. 136-137. But the reality is that Fields has never received any actual payments as a result of these supposed contracts, Tr. 221-222, and there is no evidence that any of them had any actual substance or that any secondary market for MTNs exists.

⁶ = "CUSIP stands for Committee on Uniform Securities Identification Procedures. A CUSIP number identifies most securities, including: stocks of all registered U.S. and Canadian companies, and U.S. government and municipal bonds. The CUSIP system—owned by the American Bankers Association and operated by Standard & Poor's—facilitates the clearing and settlement process of securities." See <http://www.sec.gov/answers/cusip.htm>.

Perhaps Fields' most fantastic testimony concerned the alleged sellers of the prime bank securities he marketed. Fields asserted that he personally was not the seller of the BGs he advertised but instead was a "facilitator or introducer of the product." Tr. 140-142. Fields testified that "several people" were the actual sellers of the 500 billion worth of BGs advertised in Fields' LinkedIn postings. Tr. 140-141. When asked to identify them, Fields testified that he believes an individual named "Don Morgan" was the seller "at that particular time." Tr. 140-142. Fields does not know Don Morgan but thinks he is the grandson of the famous tycoon J.P. Morgan. Tr. 141-142. Fields claimed to have heard about Don Morgan from an "associate" who was a compliance director for a "trading platform" whose name he could not recall. Tr. 141. Fields claims to have corresponded with Don Morgan's "representative," "Lars Gunnerson, or something to that effect," whose whereabouts Fields did not know. Tr. 145.

Fields also asserted that "Don Morgan" was the seller of the \$500 billion worth of MTNs advertised in Fields' postings on LinkedIn. Tr. 147-148. Thus, Fields testified that he was acting "on behalf of" Don Morgan with respect to the offering of \$1 trillion dollars' worth of securities, consisting of \$500 billion worth of BGs and \$500 billion worth of MTNs. Tr. 149-150. Asked for documentation, Fields testified that he received a "letter of intent" but was not sure whether it was produced to the Division during the investigative phase. Tr. 148-149. Fields did not offer any documentation at the hearing concerning Don Morgan or the \$1 trillion worth of securities Fields claimed to have been offering on Don Morgan's behalf. Fields testified that he did not remember who the seller was for BGs and MTNs that he advertised in other postings on LinkedIn. Tr. 157-159 and Div. Ex. 24A, p. 4 (Post titled "Real Deals for MTN's and BG's"); Tr. 160-162 and Div. Ex. 24A, p. 1 (Post titled "Medium Term Notes (MTN) Exchange). Even leaving aside Fields' "memory lapses" on critical parts of his grand story and

his lack of documentation to support any of it, Fields' testimony is incredible on its face and entitled to no weight except to the extent his lack of candor provides further support for the assessment of significant sanctions.

Fields' reliance on hearing exhibits that gave every appearance of being inauthentic and/or stage props being used by other fraudsters provides further support for the conclusion that the prime bank securities he marketed were fictional. With the stated objective "to prove ...that bank guarantees do exist," Tr. II, 143-149 at 145, Fields relied on a purported \$100 million "letter of guarantee" (also denominated "bank guarantee") from Credit Suisse in Zurich, Switzerland. Resp. Ex. 1, p. 1. This one-page document bears two different issue dates -- "Nov. 04, 201" [sic] and "04nd day of October 201" [sic]) -- neither of which makes sense. The document purports to be an "irrevocable, divisible, assignable and confirmed bank guarantee" made out in blank without identifying a beneficiary or referencing any underlying commercial transaction. *Id.* But the document obviously cannot be credited as "proof" that BGs as described by Fields do actually exist. This is because, in addition to its facial irregularities, the document's source was shown to be the website of an entity calling itself "KYC Consultant" that had no apparent relationship to Credit Suisse. Tr. II, 171-176.

Fields' other exhibits were equally without merit:

- Fields relied on a printout of a screen purportedly from the website of Bloomberg Finance that purported to describe an instrument issued by Deutsche Bank. Resp. Ex. 1, p. 2. Because Fields provided no foundation and because serious questions were raised as to authenticity, Tr. 176-179, the document is entitled to no weight.

- Fields attached to his prehearing brief a two-page chart titled “Fidelity Alert – Fixed Income Offerings.” Div. Ex. 58 and Ex. B thereto. Fields’ pre-hearing brief characterized this exhibit as “an advertisement from Fidelity advertising the sell [sic] of Mid Term Notes to the secondary Market [sic].” Div. Ex. 58, p. 8. However, the document is merely an example of an alert sent to individuals who have expressed interest in purchasing corporate debt instruments that bear no resemblance to the MTNs advertised in Fields’ social media postings and other communications. Tr. 115-118 and Div. Ex. 60.
- Fields attached to his prehearing brief a four-page document with the heading “<http://eurolinkgroup.wordpress.com/>” that he characterized as “show[ing] Mid Term Notes recently sold on the secondary market.” *See* Div. Ex. 58, p. 8 and Ex. D thereto. The exhibit purported to reflect sales of MTNs issued by Citigroup and J.P. Morgan. However, the source of Fields’ exhibit – a website calling itself “Eurolink” – bore strong indicia of being fraudulent and the exhibit clearly does not reflect sales of securities issued by Citigroup or JP Morgan. *See* Tr. 119-123 and Div. Ex. 63.
- Fields attached various other documents to his pre-hearing brief in support of his contention that BGs and MTNs exist and are sold on secondary markets. Field described one of these documents as “an introduction to bank guarantee and the secondary market”; Fields did not cite a source for this document but implied that its source was Investopedia, which is a website once owned by Forbes. *See* Div. Ex. 58, p. 8 (Fields’ Pre-Hearing brief) and Ex. A thereto (“an Introduction to Bank Debenture Trading Programs”). However, the actual source of Fields’

exhibit was a website named “BigBooster.com” which advertises itself as a “one-stop money, marketing & success powerhouse” that touts “remarkable breakthroughs to multiply your time and money into an ever-growing, indefinitely-sustainable income!” Tr. II, 110-113 and Div. Ex. 59. Stark testified regarding his review of the BigBooster.com website and his conclusion that it bears strong indicia of a site that either promotes or assists in the promotion of prime bank frauds. Tr. 113-115.

In summary, Fields adduced no credible evidence of the existence of “Tier 1 traders,” BG and MTN programs at “top ten world banks,” a secondary market on which letters of credit can be traded like securities or the €500 billion resale contract he claims to have brokered. The conclusion is inescapable that Fields did not have a reasonable basis to believe that BGs and MTNs exist as a class of securities that can be traded on secondary markets. Furthermore, even if Fields held a subjective belief (however unreasonable) in the existence of such securities and markets, Fields had no reasonable basis to believe that he personally could sell or broker the sale of the billions of dollars’ worth of securities as described in his postings on social media platforms. To the contrary, Fields knew or should have known that his postings offered fictional prime bank securities that he could not deliver.

In contrast to the implausible evidence offered by Fields, the Division’s expert witness, Stark, provided a cogent analysis of the record evidence supporting the conclusion that the securities that Fields offered were typical of prime bank fraud schemes.⁷ As Stark explained, the

⁷ Expert opinion about prime bank frauds is admissible notwithstanding that it embraces the ultimate issue to be decided as long as the expert has “carefully explained the source of his extensive knowledge of prime bank frauds and explained what attributes these schemes, in his considerable experience, often share...[e]ven if his testimony embraced the ultimate issue, such

typical prime bank promotion is premised on the existence of a secret secondary market within which the world's largest and most secure (i.e., *prime*) banks are said to trade financial instruments on a daily basis in billion dollar volumes. Tr. II, 58-59 and 67. A necessary corollary upon which these schemes depend is the notion that banks issue instruments like "prime bank guarantees" that can be resold like securities on these secretive secondary markets. Tr. II, 54-55 and 58. The promoters of prime bank schemes often assert that this supposed secondary market exists in Europe and is a closely guarded secret. Tr. II, 62-63. That assertion fosters the impression that offerings of prime bank securities are exclusive and that the opportunity may be lost if the investors attempt to conduct due diligence. Tr. II. 61-63.

The record establishes that Fields' postings on social media reflect many of the common indicia of prime bank schemes. Just as the perpetrators of such schemes often make unauthorized reference to the name of one or more well-known banks; Tr. II, 64-65, Fields appropriated the names of "top ten world banks" in his postings. Tr.107; Tr. II, 90 and Div. Exs. 24 & 25. Fields also asserted that the offerings were so large that they could only be made in "tranches," and made liberal use acronyms for financial terms like "SWIFT" [Society for Worldwide Interbank Financial Telecommunication] and jargon like "fresh cut," "slightly seasoned" and "rolls and extensions." Tr. 147-148; 161; Div. Exs. 24 & 25; Tr. II, 93.

As Stark also explained, social media and the Internet can be easily misused by would-be perpetrators of prime bank frauds to identify and defraud potential victims. An attractive Website can make a promoter seem established and sophisticated, yet the cost of creating and maintaining such a site is *de minimis*. Tr. II, 68-69. A myriad of templates and copious amounts

testimony is permissible as long as the expert's testimony assists, rather than supplants, the jury's judgment." *United States v. Dazey*, 403 F.3d 1147, 1171-72 (10th Cir. 2005).

of content that can be used to create documents that look official can be easily found on the Internet and adapted or simply copied with little effort. *Id.* Moreover, the increasing popularity of social media as a business networking platform allows promoters to target investors for fictitious offerings of BGs and MTNs. *Id.* and Tr. II, 86-87. Social media platforms automatically search for and report connections between persons who are otherwise strangers, and thereby, lend themselves to misuse by fraudsters seeking to perpetrate a high-tech version of “affinity fraud,” in which the fraudster seeks to gain the victim’s trust through some apparent common acquaintance, group affiliation or special interest. Tr. II, 68-69.

C. Respondent’s False Claims on AFA and Platinum’s Websites

As noted, Field’s LinkedIn profile provided hyperlinks that directed members to his websites for AFA and Platinum. Those websites contained numerous false and misleading statements designed to bolster the credibility of Fields and his postings for BGs and MTNs on social media platforms. Division Exhibit 20 is a printout of the content of AFA’s website as it existed on May 20, 2011. Tr. 176-177. AFA’s website was operational and publicly available until sometime after May 20, 2011, when the web hosting company that Fields engaged asked him to take the site down because it had become infected with a virus. Tr. 178-179. Division Exhibit 21 is a printout of the content of Platinum’s website as it existed on May 24, 2011. Tr. 176. Fields is the maker of, and the only person responsible for, each and every statement made on the AFA and Platinum websites. Tr. 168-169; 177.

AFA’s homepage displayed a “Welcome to our Website” message which began with the statement that “Anthony Fields & Associates is Registered with the Securities and Exchange Commission as Investment Advisors.” [sic] Div. Ex. 20, p. 1. AFA’s website also had a

“Company Bio” which stated that “Anthony Fields & Associates is an investment advisory firm registered with the Securities and Exchange Commission.” Tr. 180-181 and Div. Ex. 20, p. 3. This statement was intended to convey the message that AFA was a bona fide investment advisory firm but was misleading because, as discussed below, AFA was ineligible to register as an investment adviser with the SEC.

Fields also made the following false and misleading claims on AFA’s websites:

- AFA’s Company Bio page asserted that AFA “was organized to take advantage of the need to fill a gap in the Government securities market and a \$2.5 billion contract.” Div. Ex. 20, p. 3. This statement was false. AFA’s registration with the SEC as an investment adviser had nothing to do with the supposed \$2.5 billion contract. Tr. 183-184. AFA did not have a \$2.5 billion contract. Tr. 183-184.
- Fields asserted, in the “What’s New” section on the AFA homepage, that “Anthony Fields & Associates has acquired a \$50 billion contract!” Div. Ex. 20., p. 1. That statement was misleading at best, since AFA’s supposed \$50 billion contract consisted of a highly unrealistic contract that made no sense, and pursuant to which no money ever changed hands. Tr. 194-206 and Div. Exs. 9 and 16.
- Fields asserted on the AFA Company Bio page that AFA “has an arrangement with the 45th primary dealer” of U.S. Treasury securities.” Div. Ex. 20, p. 3. By “primary dealer,” Fields was referring to “designated counterparties for the Federal Reserve Bank of New York in its execution of market operations to carry

out U.S. monetary policy.” *Id.* The statement that AFA had a relationship with a primary dealer was false. Tr. 185-190.

- Fields asserted on the AFA Company Bio page that “the management of Anthony Fields & Associates is experienced in company start-ups and securities trading in government securities in particular.” Div. Ex. 20, p. 4. That statement was false as well. Tr. 190-192.
- Fields asserted in the “Recent Events” section of the AFA Company Bio page that “Anthony Fields has established a securities brokerage firm ‘Platinum Securities Brokers’ in a bold effort to reduce brokerage fees!” Div. Ex. 20, p. 4. That assertion was made on AFA’s websites for at least a year after Fields withdrew Platinum’s SEC registration at the request of FINRA. Tr. 182. The assertion was also misleading because Platinum had no experience as a securities broker. Tr. 67.
- AFA’s ‘Our Services’ page explicitly offered to provide “Investment Advice,” “Financial Planning,” “Managed Discretionary Funds,” and “Non Managed Discretionary Funds.” Div. Ex. 20, pp. 6-7. Specific reference is made to “our expert investment team” and “our experienced investment and research team headed by Anthony Fields” despite Fields being the only person involved with AFA. These statements were misleading because Fields was the only professional associated with AFA and his experience as an investment adviser was *de minimis* at best. Tr. 49 and 58-59.

- The “Frequently Asked Questions” section of the AFA websites contained what Fields intended as an offer to sell Treasury securities to high net worth individuals and institutional investors. Div. Ex. 20, , pp. 8-9; Tr. 192-193. That statement was aspirational at best, since AFA never had any paying clients. Tr. 58 and 192-194.

Fields also made false and highly misleading claims on Platinum’s Website. Among these was the false assertion that Platinum was “[l]icensed in the state of Illinois and registered with the Securities and Exchange Commission.” Div. Ex. 21, p. 3. That statement was false because Platinum was not licensed by the State of Illinois and Platinum withdrew its SEC registration in May 2010. Tr. 175-177. Yet until at least May 2011, the website continued to assert that Platinum was an SEC-registered broker-dealer. Tr. 176-177. Fields also asserted in the “Financial Model” section of the website that “Platinum Securities Brokers work specifically with institutional clients.” Div. Ex. 21, p. 1. That assertion was false because Platinum never provided any services to any client. Tr. 66 and 169. Fields also made the false assertion that “Platinum Securities Brokers not only have their own research analysts, but also have strong relationships with other research firms.” Div. Ex. 21, p. 1. Fields was the only person associated with Platinum and his only “relationship” with “other research firms” was his subscription to Bloomberg online. Tr. 169-173. Further, Fields claimed on Platinum’s website that it had a “large, executable inventory, which provides access to more than 25,000 Government securities” and “a portfolio of over 25,000 Government securities.” Div. Ex. 21, pp. 1, 3. That assertion was also false because Platinum did not have any securities inventory. Tr. 173-176.

D. Respondent's False Representations in Registering AFA as an Investment Adviser

In or around February 2010, Fields registered AFA as an investment adviser by completing forms available on the Commission's Investment Adviser Public Disclosure (IAPD) website. Tr. 68-70, 84-86 & Div. Ex. 62, pp. 23 & 25. AFA was ineligible to register. AFA's principal place of business was Fields' residence in Illinois. Tr. 40. Illinois had enacted an investment adviser statute. Section 203A of the investment Advisers Act prohibits an adviser that is regulated or required to be regulated in the state in which its principal office is located from registering with the SEC unless it has assets under management in excess of \$25 million or advises a registered investment company. AFA met neither of these conditions. Tr. 58 and 62.

In July 2010, Fields attached a brochure on AFA to the Form ADV that he had filed with the SEC. Tr. 85-87 and Div. Ex. 5, p. 5 and Div. Ex. 6. Fields knew that his completed Form ADV and brochure would be publicly available on the IAPD website. Tr. 68-70. Fields also knew he had an obligation to be truthful in completing the forms necessary to register AFA as an investment adviser. Tr. 71 & Div. Ex. 5. Under penalty of perjury, Fields certified the truthfulness of the statements that he made in Form ADV. Tr. 85-86 & Div. Ex. 5, p. 25. Nonetheless, Fields falsely certified in Form ADV that AFA had assets under management (AUM) "of \$25 million in U.S. dollars or more." Tr. 71-72 & Div. Ex. 5, p. 2. In actuality, AFA had no AUM whatsoever. Tr. 83. AFA has also earned no revenues from providing investment advisory services. Tr. 47.

Fields asserted at the hearing in this matter that his certification that AFA had AUM of \$25 million or more was based on his "anticipation" of receiving assets to manage in the future. Tr. 83. Fields' alleged anticipation of future AUM does not render his certification truthful. Fields had no reasonable basis to anticipate that AFA would have \$25 million AUM. More

fundamentally, the instructions to Form ADV expressly provide that “[i]n determining the amount of your regulatory assets under management include the securities portfolio for which you provide continuous and regular supervisory or management services.” Tr. 72-74 and Div Ex. 5, p. 2 & Div Ex. 5A, p. 6. Fields knew what it meant for an investment adviser to provide regular and continuous supervisory or management services.” Tr. 76. Fields had studied the subject matter encompassed by the Series 7 and Series 63 examinations offered by the Financial Industry Regulatory Authority. Tr. at 74-76. The Series 7 examination covers material for general securities registered representatives and the Series 63 examination covers material for investment advisers. Tr. at 74-75. Fields was also a former CPA. Tr. 24.

Fields also certified in Form ADV that AFA had total AUM of \$400 million for four clients. Tr. 79-80 and Div. Ex. 5, p. 8. Fields certified that \$200 million of the total \$400 million in AUM was in discretionary accounts and \$200 million was in non-discretionary accounts. Tr. 80 and Div. Ex. 5, p. 8. Those representations were all false as well. Tr. 83. Fields also falsely certified in Form ADV that AFA had clients and that 11% to 24% of them were high net worth individuals and 26% to 50% of them were hedge funds. Tr. 80 and Div. Ex. 5, p. 7. Those representations were all false. Tr. 80-82. Finally, the brochure that Fields attached to Form ADV asserted that Platinum was a broker-dealer registered with the Commission. Tr. 87-88 and Div. Ex. 6. That representation was false at least as of September 2010, when Fields withdrew Platinum’s registration after FINRA told him that Platinum did not meet minimum net capital requirements. Tr. 65-66.

E. Respondent's Failure to Comply with SEC Requirements for Recordkeeping and Practices and Procedures

In the period March 2010 to October 2010, AFA did not have any written procedures designed to prevent violations of the Investment Advisers Act. Tr. 89-91, 93 and Div. Ex. 22, p. 150. In or about October 2010, Fields subscribed to a commercial service named National Regulatory Services that provided templates for company policies and procedures. Tr. 94-95. Fields downloaded templates for a compliance code and an ethics manual in May 2011. Tr. 96. Neither template was altered in any way to reflect Fields' particular businesses. Moreover, Fields did not even read the compliance code at any time prior to giving investigative testimony on June 17, 2011. Tr. 95-96 and Div. Ex. 22, pp. 150-153. Fields also failed to read the template for the ethics manual at any time prior to giving investigative testimony in this matter on June 17, 2011. Tr. 96-99 and Div. Ex. 22, p. 160-161.

Fields also failed to maintain required books and records, including records relating to client communications through LinkedIn, TradeKey and other platforms or service providers. Div. Ex. 22, pp. 10-11. Fields admitted that, despite utilizing several free email and online communication providers (including NetZero, LinkedIn, and TradeKey) which he was aware routinely delete emails and online communications after six months, he did nothing to preserve emails prior to their deletion. *Id.* As a result, Fields was unable to produce any of the email or online communications that he was required to retain, including records reflecting client solicitations and securities offerings, that were more than six months old. *Id.* Fields testified that such emails and online communications once existed, but that he failed to preserve them. Tr. 151-152.

LEGAL ARGUMENT

I. Respondent Willfully Violated Section 17(a) of the Securities Act

Fields willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §78q(a), by posting offers on social media sites to sell fictitious prime bank securities and by directing potential buyers to AFA and Platinum's websites and the additional misrepresentations made therein in an attempt to bolster his credibility. Securities Act Section 17(a) makes it unlawful for any person "in the offer or sale of any securities" by jurisdictional means:

- 1) to employ any device, scheme, or artifice to defraud, or
- 2) to obtain any money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- 3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

To establish violation of Securities Act Sections 17(a)(1) and 17(a)(3), the Commission must show either a misrepresentation or omission regarding material facts or other fraudulent conduct. *See Basic Inc. v. Levinson*, 485 U.S. 224, 235 n.13 (1988) (citation omitted). A statement or omission is material if a reasonable investor would view its disclosure as significantly altering the "total mix" of available information. *See id*; *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Establishing violation of Section 17(a)(1) requires a showing of scienter, but a showing of mere negligence is sufficient to establish a violation of Section 17(a)(3). *See SEC v. Steadman*, 967 F.2d 636, 641-42, 643 n.5 (D.C. Cir. 1992), *citing Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n. 12 (1976); *Aaron v. SEC*, 446 U.S. 680, 686 n. 5 (1980).⁸ Scienter may be established by indirect evidence and may extend to a form of

⁸ Scienter is a mental state consisting of an intent to deceive, manipulate or defraud. *Ernst & Ernst*, 425 U.S. at 193 n. 12. Scienter has also been described by the Supreme Court as a "wrongful state of mind." *Dura Pharm v. Broudo*, 544 U.S. 336, 341 (2005).

extreme recklessness. See, e.g., *Herman & MacLean v. Huddleston*, 459 U.S. 375, 379 n. 4 (1983).⁹ Recklessness is defined as an extreme departure from the standards of care such that the danger of misleading buyers or sellers is either known or so obvious that the person must have been aware of it. *Steadman*, 967 F.2d at 641-42. Applying these standards, it is clear that the Division has satisfied its burden to show that Fields violated Sections 17(a)(1) and 17(a)(3).

First, BGs and MTNs Fields offered on LinkedIn, though utterly fictional, are “securities” within the meaning of the securities laws. Prime bank securities are typically described to investors, as in this case, as a type of security. See generally, *SEC v. Lyttle*, 538 F.3d 601, 602 (7th Cir. 2008) (affirming grant of summary judgment to SEC on a claim under Section 10(b) of the Exchange Act against perpetrators of a prime bank fraud, court stated “prime bank fraud ... is a common fraud in which the perpetrators solicit investments by telling prospective investors that the investors’ money will be invested in high-yield bank-issued securities not available or even known to the general public”). The federal securities laws apply even though “[p]rime bank securities do not exist” because the standard is not whether the investment actually existed but whether, as described to investors, it has the characteristics of a security. *United States v. Lauer*, 52 F.3d 667, 669-70 (7th Cir. 1995); *Martin R. Kaiden*, Exchange Act Release No. 41629, 1999 WL 507860 (Jul. 20, 1999).¹⁰

⁹*Herman & MacLean v. Huddleston* stated that while the Supreme Court has not expressly addressed the issue, the prevailing view of the appellate courts is that reckless behavior may satisfy the scienter requirement. See also, *SEC v. Jakubowski*, 150 F.3d 675, 681 (7th Cir. 1998); *In re Scholastic Corp. Securities Litigation*, 252 F.3d 63, 74 (2^d Cir. 2001).

¹⁰ See also *SEC v. Secure Capital Funding Corp.*, No. 3:11-cv-00916-AET-DEA (D.N.J. Feb 18, 2011) [Litigation Release No. 21864 (Feb. 22, 2011)] (granting TRO and asset freeze against prime bank fraud scheme to sell fictitious “Swiss debentures”); *SEC v. Terry L. Dowdell*, No. 3:01CV00116 (W.D. Va. 2002) [Litigation Release Nos. 17454 (Apr. 2, 2002), 17553 (June 10, 2002), 17781 (Oct. 10, 2002), 17780 (Oct. 10, 2002)] (asset freeze and later permanent injunction against prime bank fraud scheme to sell fictitious medium term debentures); *SEC v. Sebastian Corriere*, No. 8:02-CV-666-T1EAJ (M.D. Fla.; Apr. 18, 2002) [Litigation Release Nos. 17506 (May 7, 2002), 17582 (June 24, 2002)] (granting preliminary injunction against promoter of fictional high yield medium term notes); *SEC v. Resource Development International, LLC*, No. 3:02-CV-0605-H (N.D. Tex. Mar. 26, 2002) [Litigation Release No.

Second, Fields' social media postings and related conduct also satisfy the "in the offer or sale of any securities" element of Section 17(a). That term is "define[d] broadly," and is "expansive enough to encompass the entire selling process." See *United States v. Naftalin*, 441 U.S. 768, 772 (1979). Section 17(a) applies not only to the "sale" but also to the "offer" of securities. 15 U.S.C. § 77q(a). "Actual sales [are] not essential" in order to maintain a Section 17(a) claim. *SEC v. Am. Commodity Exch., Inc.*, 546 F.2d 1361, 1366 (10th Cir. 1976). "Because section 17(a) applies to both sales and offers to sell securities, the SEC need not base its claim of liability on any completed transaction at all." *SEC v. Tambone*, 550 F.3d 106, 122 (1st Cir. 2008), citing *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 733-34 & n. 6 (1975).¹¹ The plain meaning of Fields' postings on LinkedIn is that he was offering to sell securities. Fields' assertion that he thought "Don Morgan" or someone else whose name he could not recall were the actual sellers is neither credible nor sufficient to negate the plain meaning of his offers to sell.

Third, the Division's has more than satisfied its burden to prove that Fields misrepresented material facts. Fields' primary misrepresentation was the claim that the BGs and

17438 (Mar. 26, 2002)] (granting TRO and asset freeze to stop a prime bank fraud scheme); *SEC v. Lewis J. McConnell, Jr.*, Civil Action No. 02 0075 RCL (D.D.C. Jan. 16, 2002) [Litigation Release Nos. 17322 (Jan. 16, 2002), 17517 (May 14, 2002) (permanent injunction and \$100,000 civil penalty imposed for offering fictitious securities); *SEC v. Steve E. Thorn*, No. C2-01-290 (S.D. Ohio Apr. 2, 2001) [Litigation Release Nos. 16950 (Apr. 3, 2001), 17523 (May 20, 2002), 17772 (Oct. 7, 2002)] (TRO and asset freeze granted against scheme that raised over \$60 million from fictitious notes issued by foreign banks).

¹¹ Cf., *SEC v. Gallard*, No. 95 Civ. 3099(HB), 1997 WL 767570, *3 (S.D.N.Y. Dec. 10, 1997) (sale of prime bank instruments and letters of credit occurred "when the contracts to purchase them were executed"); *SEC v. Roor*, No. 99 Civ. 3372(HB), 2004 WL 1933578 (S.D.N.Y. Aug. 30, 2004) (sale of prime bank instruments occurred "at the time [defendant] received the duped would-be investors' money"); *Baurer v. Planning Group, Inc.*, 669 F.2d 770, 779 (D.C. Cir. 1981) (exchange of funds for an investment note constituted the purchase).

MTNs he purported to offer actually existed and could be traded like securities on secondary markets. Div. Pro. ¶¶ 11-38. The nonexistence of such securities and markets is established by Fields' admissions that he had neither an inventory of BGs and MTNs nor any arrangement to sell such things on behalf of the banks whose names he used in his postings. See Tr. 135-40, 142-143, 158; Div. Ex. 22, pp. 30-31. Fields also admitted that he has never bought or sold a BG or MTN. *Id.* Indeed, Fields was unable even to provide a coherent explanation of what he thought BGs and MTNs were, much less to provide a plausible explanation of his plan to arrange sales of "billions" of dollars' worth of them. See Tr. 104-110 & Div. Ex. 22, p. 123; Tr. 124-124, 132-135, 2210222; Div. Ex. 22, pp. 128-129, 136-137. The Division also showed that Fields' social media postings about BGs and MTNs raised many of the classic red flags identified in government agency investor alerts and other public domain materials warning of prime bank securities frauds. See TR. II, 49-51 and 95-110; Div. Pro. 36-38. Such proof has been held to be fully sufficient in other prime bank fraud cases.¹²

Fourth, materiality is also not a close question on the facts of this case. Indeed, it is difficult to imagine anything more material than the fact that the securities Fields purported to offer did not exist. The falsity of Fields' claim to specialize BGs and MTNs would also be material to a reasonable investor, as would the falsity of many of the claims made on the AFA and Platinum websites linked to Fields' LinkedIn profile. Among these are the claims that AFA is an SEC-registered investment adviser with a large and sophisticated clientele and contracts

¹² See, e.g., *Martin R. Kaiden, supra* at *5 ("To demonstrate that the instruments offered by Kaiden do not exist, the Division introduced that that [offeree] contacted a variety of banks and investment banks and determined that the instruments were likely a scam. In addition, the Division introduced various regulatory alerts issued by the Commission and federal institution supervisory agencies, as well as Canadian regulators, warning of 'Prime Bank schemes.' The Division further cites a series of judicial determinations issued after the events at issue finding that such instruments were fraudulent and fictitious. We believe that the Division has established that these instruments do not exist by a preponderance of the evidence.").

supposedly worth “\$50 billion” and \$2.5 billion” and that Platinum is a registered broker-dealer with a large inventory of securities. Div. Pro. 39 - 49.

Fifth, the element of scienter is also established by the evidence in this case. Fields is a CPA who purports to have taken courses covering the subject matter of FINRA’s Series 7 (General Securities Registered Representative) and 63 (Uniform Securities) examinations. Div. Pro. ¶¶ 1, 52. This profile strongly supports the inference that Fields had to know that no secondary market for BGs and MTNs exists. Furthermore, the fact that Fields aggressively advertised billions of dollars of securities he knew he did not have, knew he had no realistic prospect of obtaining and knew were of a class he had never before traded (Div. Pro. ¶ 26), also supports the inference of scienter. Fields also had to know that his representations about AFA and Platinum (Div. Pro. 39-49) were false or at least highly misleading to potential investors. *See generally SEC v. Asset Recovery and Management Trust*, No. 2:02-CV-1372, 2008 WL 4831738 (M.D. Ala. Nov. 3, 2008) at *8 (“Because ‘prime bank’ instruments do not exist, courts repeatedly have held that the promoters of such schemes acted recklessly.”), *citing SEC v. Infinity Group Co.*, 212 F.3d 180, 194 (3d Cir. 2000), *SEC v. Deyon*, 977 F. Supp. 510, 516 (D. Me. 1997), *SEC v. Bremont*, 954 F. Supp. 726, 730 (S.D.N.Y. 1997) and *SEC v. Gallard*, No. 95cv3099, 1997 WL 767570 at *4 (S.D.N.Y. Dec. 10, 1997). *See also SEC v. Reynolds*, No. 1:06-CV-1801, 2010 WL 3943729 at *4 (N.D.Ga. Oct. 5, 2010) (“Defendants offered financial instruments that did not exist, and courts have held promoters of similar ‘Prime Bank’ schemes acted with sufficient recklessness to show scienter”) (citations omitted). As stated in *Asset Recovery*: “The reason is apparent. What ‘prime banks’ claim to offer – a combination of huge returns and no risk – is ‘inconceivable on its face’ and imposes a heightened duty to investigate.” 2008 WL 483173 at *8, *citing SEC v. Deyon*, 977 F. Supp. 510, at 517; *SEC v. Milan Capital*, No. 00cv108, 2000 WL 1682761 at *5 (S.D.N.Y. Nov. 9, 2000).

There is sufficient evidence of scienter even if Fields really believed there was a secondary market for BGs and MTNs. Any such belief was extremely reckless because it was based on nothing more than other people's Internet postings that bore strong indicia of fraud and/or frivolity and on Fields' completely executory (and nonsensical) billion dollar "contracts" with people he found on Internet "discussion groups" but never met and who may well have been attempting to perpetrate prime bank frauds themselves. Div. Pro. 8-10, 25-29. Fields' proffer of evidentiary "proof" during the hearing further illustrates his recklessness. Div. Pro. 30-35. Fields' exhibits were easily traced back to sources that bore strong indicia of fraud, or at least unreliability, despite Fields' suggestion that they came from well-known financial institutions or other authoritative sources. *Id.* Rather than prove the existence of BGs, MTNs and a secondary market for them, Fields' exhibits constitute further proof of his intent to deceive or extreme recklessness at a minimum.

Finally, the weight of authority establishes that Fields' misrepresentations in his social media postings are actionable under the "scheme" liability provisions of Sections 17(a)(1) and 17(a)(3) of the Securities Act. *See SEC v. Pentagon Capital Management PLC*, No. 08 Civ. 3324(RWS), 2012 WL 479576, at *42 (S.D.N.Y. Feb. 14, 2012); *SEC v. Mercury Interactive, LLC*, No. 5:07-cv-02822-WHA, 2011 WL 5871020, at *2 (N.D. Cal. Nov. 22, 2011); *SEC v. Geswein*, No. 5:10CV1235, 2011 WL 4565861, at *2 (N.D. Ohio Sept. 29, 2011); *SEC v. Daifotis*, No. C 11-00137 WHA, 2011 WL 3295139, at *5-6 (N.D. Cal. Aug. 1, 2011).¹³ The contrary reasoning of *SEC v. Kelly*, 817 F. Supp. 2d 340 (S.D.N.Y. 2011) is inapplicable on the

¹³ *See also SEC v. Mercury Interactive, LLC*, 2011 WL 5871020, at *3 (*Janus* does not apply to Section 14(a) of the Exchange Act because it does not contain the "to make:" language contained in Rule 10b-5(b)); *SEC v. Daifotis*, 2011 WL 3295139, at *6 (N.D. Cal. Aug. 1, 2011) (*Janus* does not apply to Section 34(b) of the Investment Company Act [15 U.S.C. §80a-33(b)] because the decision was limited to Rule 10b-5(b) and there is no private right of action under Section 34(b)).

facts of this proceeding.¹⁴ Unlike the situation in *Kelly*, there is no basis here for concern that scheme liability charges are being used to circumvent the requirements for imposing primary liability on persons who did not “make” or have ultimate authority concerning the misrepresentations in question. Fields is the only maker of the misrepresentations contained in his LinkedIn postings and websites. Furthermore, even if *Kelly* were applicable here, the Division’s charges under Sections 17(a)(1) and 17(a)(3) are sustainable because Fields engaged in fraudulent conduct in addition to his misrepresentations. Specifically, the evidence shows that Fields (1) solicited and received highly sensitive personal information from prospective buyers of BGs and MTNs and (2) entered into purported contracts (however quixotic) involving the purchase and sale of BGs and MTNs. Fields also registered AFA as an investment adviser and registered Platinum as a broker-dealer in an attempt to bolster the credibility of his postings for BGs and MTNs. This conduct is at least as substantial as conduct found sufficient to support Section 17(a) charges in other cases. *See SEC v. Kearns*, 691 F. Supp. 2d 601, 617-18 (D.N.J. 2010) (corporate officer’s knowledge and discussion of scheme and implementation of inadequate investigations were sufficient to state claim under Section 17(a) on a scheme liability

¹⁴ *Kelly* dismissed the Commission’s charges under Section 17(a)(1) and 17(a)(3) on the basis that the alleged deceptive acts (i.e., structuring transactions with a counterparty to purchase advertising) were not themselves deceptive, but rather became deceptive only because of another’s subsequent misstatements about those transactions in its public filings.¹⁴ *Kelly* reasoned that to hold otherwise “would allow the SEC to allege that the conduct *Janus* held insufficient to establish primary liability under subsection (b) of Rule 10b-5 is scheme-related conduct that supports primary liability under subsections (a) and (c), notwithstanding that the alleged misstatements represent the basis of that claim.” *Kelly*, 817 F. Supp. 2d at 344. *Kelly*’s analysis was unsound, however, because Section 17(a) of the Securities Act does not contain the “to make” language found in Rule 10b-5 which *Janus* construed. It is for precisely this reason that other courts that have considered the question have concluded that *Janus* is inapplicable to claims filed under Section 17(a). *Kelly*’s reasoning is also at odds with the Supreme Court’s reasoning in *United States v. Naftalin*, 441 U.S. 768, 773-74 (1979), which held that Sections 17(a)(2) and (3) were intended to capture additional conduct that can be the basis for an action rather than limit the breadth of conduct that violates Section 17(a)(1).

theory); *SEC v. Patel*, No. 07-cv-39-SM, 2009 WL 3151143 (D.N.H. Sept. 30, 2009) (SEC had sufficiently alleged conduct separate from underlying misrepresentations as to corporate defendant).

II. Respondent Willfully Violated Section 15(a) of the Exchange Act

Fields' willfully violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)] by offering brokerage services through the Platinum website when he was not a registered broker-dealer or associated with one. Fields also willfully violated Section 15(a) through his postings on TradeKey and his emails claiming to represent a client interested in buying \$50 billion worth of BGs. To the extent that Fields' LinkedIn postings are deemed offers to intermediate sales rather than offers to sell, Fields also violated Section 15(a) in that manner.

Section 15(a) provides in pertinent part that:

- (1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person ... to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security ... unless such broker or dealer is registered in accordance with subsection (b) of this section.

The Division is not required to show scienter in order to establish a violation of Section 15(a). See *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003). As demonstrated below, the evidence in this case establishes the elements of a Section 15(a) violation.

First, Fields held himself out as a broker-dealer. Div. Pro. ¶¶ 6, 11-18, 48 and 55.¹⁵

Fields was never licensed as a broker-dealer and, at least after May 2010 when he withdrew

¹⁵ Section 3(a)(4) of the Exchange Act generally defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others," and the definition connotes "a certain regularity of participation in securities transactions" at key points in the chain of distribution." *Mass. Fin. Srvs., Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976); *SEC v. National Executive Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).¹⁵ "A person may be 'engaged in the business,' among other ways, by

Platinum's registration with the SEC, had no basis to assert that Platinum was a registered broker-dealer with which he was associated. Yet Fields held out Platinum (which was his alter ego) as a broker-dealer and solicited business as such on Platinum's website at least through June 17, 2011. Div. Ex. 22, p. 197. Fields expressly represented that Platinum was "[l]icensed in the state of Illinois and registered with the Securities and Exchange Commission." Div. Ex. 21, p. 3. Fields made numerous other false assertions about brokerage services supposedly provided by Platinum. For example, Fields asserted that "[a]t Platinum Securities Brokers you can buy bills, notes bonds, tips and strips or mutual funds either by calling one of our representatives or by transacting these securities yourself on the Internet." Div. Ex. 21 at p. 4.

Second, the evidence also establishes that Fields used TradeKey and email to solicit business as a broker-dealer after May 2010. Div. Ex. 21, pp. 5-19 (TradeKey posts and email dated October-November 2010). At the hearing, Fields admitted that he was attempting to "broker a purchase and sale of MTNs" through such communications. Tr. 225. Such recruitment of investors for the purchase of securities is strongly indicative of broker conduct. *See SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005). The Commission has likewise explained that "[s]olicitation is one of the most relevant factors in determining whether a person is effecting transactions." *Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934*, Exchange Act Release No. 44291, 2001 WL 1590253, at *20 (May 11, 2001)(listing activities that constitute "effecting transactions").

receiving transaction-related compensation or by holding itself out as a broker-dealer." *See Strengthening the Commission's Requirements Regarding Auditor Independence*, Exchange Act Release No. 47265 (Jan. 28, 2003), 68 FR 6006, 6014-15 n.82 (Feb. 5, 2003).

III. Respondent Willfully Violated the Anti-Fraud Provisions of the Advisers Act

C. Respondent Willfully Violated Sections 206(1) and 206(2) of the Advisers Act

Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2)] provide that:

It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly –

- (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
- (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

Investment adviser fraud must concern a material fact. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 200 (1963). Information is “material” if there is a substantial likelihood that a reasonable person would consider the information important in making an investment decision or if the information would significantly alter the total mix of information available. *See Basic Inc.*, 485 U.S. at 231-32; *TSC Industries*, 426 U.S. at 449. Scienter is an element of a Section 206(1) violation, but not a Section 206(2) violation, and can be satisfied by a showing of extreme recklessness. *See Steadman*, 967 F.2d at 641-42, 643 n.5. An investment adviser is a fiduciary whose actions are governed by the highest standards of conduct. *See SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. at 191-92.¹⁶

¹⁶ An individual associated with an investment adviser can be charged as a primary violator under Section 206 of the Advisers Act where the individual controls the adviser and/or engages in activities sufficient to meet the broad definition of “investment adviser” set forth in Section 202(a)(11) of the Advisers Act. *See In the Matter of John J. Kenny and Nicholson/Kenny Capital Management, Inc.*, Investment Advisers Act Release No. 2128, 80 SEC Docket 473 2003, WL 21078085 (May 14, 2003). Section 202(a)(11) defines an investment adviser as any person who (a) for compensation (b) engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities. Here, Fields is the sole proprietor, officer, director, and control person of AFA and AFA has no other employees. At all relevant times, Fields was solely responsible for the management of AFA’s business and

The evidence shows that Fields violated Sections 206(1) and 206(2) of the Advisers Act. First, Fields used the device or artifice of false information on AFA's website and Form ADV to mislead prospective clients as a matter of practice and as a course of business. Div. Pro. ¶¶ 39-47, 49-55. Fields intentionally provided prospective clients with false information about, among other things, his AUM, number of clients, expertise and experience, operational history, existing contracts, and ability to utilize Platinum as a primary dealer to reduce client commissions.

Second, Field's many misrepresentations were material. Misrepresentations about AUM and fund performance are material because investors may use such figures to draw conclusions about an adviser's size, investors, and abilities. *See, e.g., Warwick Capital Management*, Initial Decisions Release No. 327, 2007 WL 505772 (ALJ Feb. 15, 2007) (initial decision finding adviser's exaggerated claims about assets under management to be material); *Barr Financial Group, Inc.*, Investment Advisers Act Release No. 2179, 81 SEC Docket 587, 2003 WL 22258489 (Oct. 2, 2003) (Commission opinion stating that misrepresentations regarding assets under management were material because "they conveyed a false impression of [the adviser's] size and investor base and of the qualifications of the Firm's management").

Third, the evidence shows that Fields acted with a high degree of scienter. Despite representing in AFA's filed Form ADV that the firm had \$400 million in AUM (Div. Pro. ¶¶ 51-53), Fields knew that AFA has never had one cent in AUM from any client. Div. Pro. ¶ 4. Moreover, having never before purchased or sold securities (Div. Pro. ¶ 4), Fields had no reasonable basis on which to represent any probable performance data on AFA's website. In addition, while reliance is not an element of a Section 206(a) violation, Fields' scienter is also

made all of AFA's investment and business decisions. Fields thus falls within the definition of an investment adviser under Section 202(a)(11) of the Advisers Act.

demonstrated by the fact that he knew prospective clients would rely on the false information on his website and in his Commission filings in considering and selecting him as their investment adviser. Tr. 87.¹⁷

Fields' defense to the Division's Section 206(a) charges is specious. Fields has asserted that he had an "expectation" to justify his false representations of AFA having \$400 million in AUM. That would be no defense, however, because any expectation that Fields had of attracting hundreds of millions of dollars in capital was patently unreasonable because it was based on completely executory contracts that required him to provide the capital himself. Div. Pro. ¶¶ 41-42. Such contracts would not satisfy the requirements of any of the accounting concept principles cited in Field's Answer to the OIP (even assuming their applicability). Fields' reliance on FASB Statement of Financial Accounting Concepts No. 5, "Recognition and Measurement in Financial Statements of Business Enterprises," for example, is completely misplaced because his contracts met virtually none of the criteria for representing that revenues were "realized or realized and earned." For example, no goods or services had been "delivered" and collectability was hardly "reasonably assured" under Fields' purported billion dollar contracts.

Even more fundamentally, Fields' reliance on SEC Staff Accounting Bulletins and Generally Accepted Accounting Rules related to the recognition of revenues in financial statements is misplaced because the Investment Adviser Registration Depository (the online

¹⁷ In fact, one potential Fields client has executed a sworn declaration stating that he relied upon this false information in purchasing fictitious bank guarantees recommended by Fields, but sold by a different entity, Secure Capital Funding ("SCF"). The declarant states that when he invested in the fictitious SCF offerings, he specifically relied on Fields' representations that he was a large adviser with sophisticated clients and was registered with, and thus subject to the rules and oversight of, the SEC. SCF is a defendant in separate ongoing SEC litigation over the fictitious bank guarantees. See *SEC v. Secure Capital Funding Corp.*, No. 3:11-cv-00916-AET (D.N.J. Feb. 22, 2011) [Litigation Release No. 21864 (Feb. 22, 2011)].

registration system through which investment advisers must file their Form ADVs) provides explicit instruction as to how to calculate regulatory AUM for purposes of completing the Form ADV. Only “securities portfolios for which [the adviser] provides continuous and regular supervisory or management services as of the date of filing [the] Form ADV” should be counted. The value of such portfolios should be based on the current market value of the assets. Fields did not have “continuous and regular supervisory or management” control over any funds, much less \$400 million, when he filed his Form ADV or any other time.¹⁸

D. Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) Thereunder [Advertising]

Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] prohibits a registered investment adviser from engaging “in any act, practice, or course of business which is fraudulent, deceptive or manipulative.” Proof of scienter is not required to establish a violation of Section 206(4). *See Steadman*, 967 F.2d at 647. Rule 206(4)-1(a)(5) prohibits any registered investment adviser, directly or indirectly, from “publish[ing], circulat[ing] or distribut[ing] any advertisement . . . which contains any untrue statement of a material fact, or which is otherwise false or misleading.” For purposes of Rule 206(4)-1(b) [17 C.F.R. § 275.206(4)-1(b)], “investment advisory material which promotes advisory services for the purpose of inducing

¹⁸ Rule 203A-2(d) [17 C.F.R. § 275.203A-2(d)] promulgated under the Investment Advisers Act did provide a limited exception for newly formed investment advisers to register with the Commission based upon a “reasonable expectation” that they will have \$25 million under management prior to the end of 120 days. However, Rule 203A-2(d) required the adviser to expressly disclose its reliance on the exception in its Form ADV. Fields made no such disclosure. Rule 203A-2(d) also explicitly stated that the exception is valid for a maximum of one 120-day period. If an adviser relies on the newly formed adviser exception and does not meet the requisite assets under management within 120 days after the SEC declares its Form ADV effective, it must file a Form ADV-W to withdraw its registration. Fields did not withdraw his registration 120 days after it became effective, even though he still did not meet the \$25 million threshold.

clients to subscribe to those services” is advertising material within the rule. *SEC v. C.R. Richmond & Co.*, 565 F.2d 1101, 1105 (9th Cir. 1977).

As previously discussed, Fields prepared and disseminated false and misleading representations on AFA’s website and in its Form ADV brochure (which was submitted to the Commission and available to the public as an attachment to his Form ADV) regarding, among other things, his industry experience and expertise and his association with a “leading institutional broker-dealer” that would provide his clients with direct access to a primary dealer and reduced trading commissions. Div. Pro. ¶¶ 39-47, 49-55. Because these postings were designed to promote advisory services for the purposes of soliciting clients, these representations constitute “advertisements” within the meaning of Rule 206(4)-1(b). Fields therefore willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-1 thereunder. *See, e.g., Isaac Sofair*, Investment Advisers Act Release No. 2245, 82 SEC Docket 3726, 2004 WL 1238258 (June 4, 2004) (settled order finding Section 206(4) and Rule 206(4)-1(a)(5) violations where brochures overstated firm’s assets under management); *Nevis Capital Management, LLC*, Investment Advisers Act Rel. No. 2214, 82 SEC Docket 523, 2004 WL 236571 (Feb. 9, 2004) (settled order finding Section 206(4) and Rule 206(4)-1 violations where adviser provided links on its website to third-party articles that contained misrepresentations or omissions regarding the adviser’s performance).

IV. Respondent Willfully Violated the Registration, Disclosure and Recordkeeping Provisions of the Advisers Act

**A. Respondent Willfully Violated Section 203A of the Advisers Act
[Ineligible to Register]**

In March 2010 when Fields filed his Form ADV, Section 203A of the Advisers Act [15 U.S.C. § 80b-3a] generally prohibited an adviser that is regulated or required to be regulated in the state in which it has its principal office and place of business from registering with the Commission, unless it has assets under management in excess of \$25 million or advises a registered investment company. Fields' principal office and place of business is in Illinois (Div. Pro. ¶ 1, 3), which has a regulatory regime for investment advisers.¹⁹ In 2010 and 2011, in AFA's Forms ADV, Fields falsely claimed that his assets under management were approximately \$400 million (Div. Pro. ¶¶ 51-53), when in fact he never had any assets under management. Div. Pro. 4. By registering with less than the required \$25 million in assets under management with no other legitimate basis for registration and no exemption available to him, Fields willfully violated Section 203A.

**B. Respondent Willfully Violated Section 207 of the Advisers Act
[False Form ADV]**

Section 207 of the Advisers Act [15 U.S.C. § 80b-7] makes it unlawful "for any person willfully to make any untrue statements of material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." A finding of

¹⁹ Effective September 19, 2011, the Advisers Act, as amended by Section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"), increased the minimum threshold of assets under management to \$100 million to register as an investment adviser with the SEC for advisers subject to regulation and examination by the state in their primary place of business and requires registered advisers that do not meet that threshold to withdraw their Form ADV registrations.

willfulness does not require a showing of intent to commit a violation, but merely intent to do the act that constitutes a violation. *See Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *Zion Capital Management*, Initial Decisions Release No. 220, 2003 WL 187262 (ALJ Jan. 29, 2003). In AFA's Form ADV filings from March 2010 through the present, Fields intentionally overstated the number and nature of AFA's clients and its total assets under management. Div. Pro. ¶¶ 50 – 53. AFA's Form ADV thus was materially inaccurate because it suggested that Fields had a large investment advisory business, when, in fact, he had essentially none. Thus, Fields willfully violated Section 207 of the Advisers Act. *See, e.g., Oakwood Counselors, Inc.*, Investment Advisers Act Release No. 1614, 63 SEC Docket 2034, 1997 WL 54805 (Feb. 10, 1997) (settled order finding adviser and adviser's president, who signed false Form ADVs, violated Section 207).

C. Respondent Willfully Violated Section 204 of the Advisers Act and Rules 204-2(a)(11) and 204-2(e)(3)(i) Thereunder [Books and Records]

Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and the rules thereunder require advisers registered with the Commission to maintain and provide to the Commission upon request certain identified reports and records. Rule 204-2(a)(11) [17 C.F.R. § 275-2(a)(11)] requires every registered adviser to make and keep true, accurate, and current books and records relating to its investment advisory business, including “[a] copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons.” Additionally, Rule 204-2(e)(3)(i) requires advisers to maintain and preserve such records in an easily accessible place for five years. The Commission does not need to prove that a defendant acted with scienter in order to establish a violation of Section 204. *See, e.g., Disraeli and Lifeplan Assocs., Inc.*, Initial Decisions Release No. 328, 90 SEC Docket 385, 2007 WL 675807,

at *22 (ALJ Mar. 5, 2007) (citing *SEC v. World-Wide Coin Ins. Ltd.*, 567 F. Supp. 724, 749, 751 (N.D. Ga. 1983) (holding scienter not required for books and records violations)).

Fields maintained virtually no records. Moreover, he had no procedures designed to preserve electronic mail records. Div. Pro. ¶¶ 56 – 57. Fields admitted that, despite utilizing several free email and online communication providers (including NetZero, LinkedIn, and TradeKey) which he was aware routinely delete emails and online communications after six months, he does nothing to preserve emails prior to their deletion. As a result, Fields was unable to produce any of the email or online communications that he was required to retain, including records reflecting client solicitations and securities offerings, that were more than six months old. Fields testified that such emails and online communications once existed, but that he failed to preserve them. Tr. 151-152. Fields, by failing to preserve emails, online and other client communications, and advertisements, willfully violated Section 204 and Rules 204-2(a)(11) and 204-2(e)(3)(i) thereunder.

D. Respondent Willfully Violated Section 204A of the Advisers Act and Rule 204A-1 Thereunder [Code of Ethics]

Section 204A of the Advisers Act [15 U.S.C. § 80b-4a] requires that certain investment advisers “establish, maintain, and enforce written policies” reasonably designed to prevent misuse of nonpublic information, and authorizes the Commission to adopt rules designed to prevent such misuse. Rule 204A-1 [17 C.F.R § 275.204A-1] thereunder requires all investment advisers to “establish, maintain and enforce a written code of ethics.” A violation of these provisions does not require a showing of scienter. *See, e.g., F. Xavier Saavedra*, Investment Advisers Act Release No. 1894, 72 SEC Docket 2613, 2000 WL 1129292 (Aug. 10, 2000). Fields testified that he did not have a code of ethics until after he received the staff’s document demand, at which time he downloaded a generic pre-packaged code of ethics that he had access

to through his off-the-shelf compliance subscription. Div. Pro. ¶¶ 56 – 57. Fields testified that he has not even read this code of ethics. Consequently, Fields willfully violated Section 204A and Rule 204A-1 thereunder by failing to establish, maintain, and enforce a compliant written code of ethics.

F. Respondent Willfully Violated Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder [Compliance Policies and Procedures]

Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require all advisers to “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and the rules thereunder by the investment adviser and its supervised persons. Here, during the first eight months that he was registered with the Commission, Fields did not have any written policies and procedures. Div. Pro. ¶¶ 56 - 57. Thereafter, he purchased an off-the-shelf policy manual. Fields did not make any substantive alterations to the policies or tailor them in any way to his specific business. In fact, Fields never printed out the policies or read them. These policies and procedures were not reasonably designed to prevent securities law violations within the meaning of Rule 206(4)-7. *See, e.g., Consulting Services Group, LLC and Joe D. Meals*, Investment Advisers Act Release No. 2669, 91 SEC Docket 2079, 2007 WL 2892695 (Oct. 4, 2007) (settled administrative proceeding charging adviser and compliance officer for adopting generic compliance manual that was not tailored to adviser’s actual business). Fields therefore willfully violated Section 206(4) and Rule 206(4)-7 thereunder.

V. Significant Sanctions Should Be Imposed Against Respondent

The assessment of whether a particular sanction recommended by the Division is in the public interest is derived from the Court’s analysis in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981), which includes the following

elements: the egregiousness of the defendant's actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the defendant's assurances against future violations; the defendant's recognition of the wrongful nature of his or her conduct; and the likelihood that the defendant's occupation will present opportunities for future violations. In addition, the Commission has listed three additional factors to be considered in making the public interest determination concerning sanctions: (1) the age of the violation; (2) the degree of harm to investors and the marketplace as a result of the violations (*see Marshall E. Melton*, Investment Advisers Act Release No. 2151, 80 SEC Docket 2258, 2003 WL 21729839, at * 2 (July 25, 2003)); and (3) the "extent to which the sanction will have a deterrent effect" (*see Schield Management Co. and Marshall L. Schield*, Exchange Act Release No. 53201, 87 SEC Docket 695, 2006 WL 231642, at * 8 (Jan. 31, 2006)). Based on these factors, this Court should impose the sanctions against Fields that are recommended below on account of the violations complained of herein.

A. Cease-and-Desist Order

Section 8A of the Securities Act, Section 21C of the Exchange Act and Section 203(k) of the Advisers Act provide, among other things, that the Court may enter an order requiring anyone who has violated any provision of those statutes to cease and desist from committing or causing such violation and any future violation of such provisions. *See* 15 U.S.C. §§ 77h-1, 78u-2; 15 U.S.C. § 80b-3(k). In considering whether to impose a cease-and-desist order, a Court should consider the *Steadman* factors discussed above. *See Herbert Moskowitz*, Exchange Act Release No. 45609, 77 S.E.C. Docket 446, 456, 2002 WL 434524, at *8 (Mar. 21, 2002). In addition, although some risk of future violations is necessary, it need not be very great to warrant issuing a cease-and-desist order. *See KPMG Peat Marwick, LLP*, 74 SEC Docket 357, 2001 WL

47245, at * 24 (Jan. 19, 2001), *recon. denied*, Exchange Act Release No. 44050, 2001 WL 223378, at * 6-7 (Mar. 8, 2001), *petition for review denied*, *KPMG, LLP v. SEC*, 289 F.3d 109 (D.C. Cir. May 14, 2002) *rehearing en banc denied*, (July 16, 2002). Absent evidence to the contrary, a finding of past violation raises a significant risk of future violation. *See Id.*

As discussed above, Fields willfully violated Section 17(a) of the Securities Act, Section 15(a) of the Exchange Act and Sections 203A, 206(1) and 206(2) of the Adviser's Act and Rules 204A-1, 204-2 and 206(4)-7. Respondent's conduct was egregious and recurrent over a period from February – March 2010 through at least June 17, 2011. Although no investors were actually defrauded out of money, the 20-40 persons who responded to the social media postings in question could have been harmed, as well as the investors who were directed to the AFA and Platinum websites containing numerous blatantly false representations. Not only are the violations recent but Respondent continues to have contacts with persons interested in buying or selling BGs and MTNs. Moreover, Respondent's conduct involved at least a reckless degree of scienter. Respondent also repeatedly declined to acknowledge the wrongfulness of his conduct, and rather than provide assurances against future violations, indicated he intends to resume that conduct in the future contingent on the outcome of this case. He could easily do so given his demonstrated knowledge of social media platforms and impressive-looking websites and his history of appropriating content about BGs and MTNs from the Internet. In light of these circumstances, a cease and desist order is appropriate.

B. Revocation of Registration as Adviser; Bar from Association and Collateral Bars

Revocation of Registration. The evidence established that Fields has never had any assets under management and that his principal place of business has at all times relevant been in Illinois, a state with a regulatory regime for advisers with less than \$100 million in assets under

management. Section 203A of the Advisers act, as amended by Section 410 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (“Dodd-Frank Act”), prohibits advisers subject to state regulation and examination regimes (including Illinois) from registering with the Commission unless they have at least \$100 million in assets under management. Accordingly, the Division requests the Court order that AFA’s registration with the Commission as an investment adviser be revoked immediately.

Bar from Association. Section 15(b)(6) of the Exchange Act [15 U.S.C. § 78o(b)(6)] provides that the Court can, among other things, bar any person from association with any broker or dealer if such person has, pursuant to Section 15(b)(4) of the Exchange Act, willfully violated any provision of the Securities Act or Exchange Act. Field’s holding himself out as a registered broker d/b/a Platinum and his making false statements on Platinum’s website warrant a bar from association with any broker, dealer or investment company. Fields should be permanently barred from association with any broker or dealer.

Collateral Bars. Based on Fields’ willful violations of Section 17(a) of the Securities Act and Sections 203A, 206(1) and 206(2) of the Adviser’s Act and Rules 204A-1, 204-2 and 206(4)-(7), it is also appropriate under Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) to impose a permanent bar on Fields from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter. Fields also should be permanently barred from association with any municipal securities dealer or transfer agent.

These sanctions are warranted because Fields’ conduct was egregious and created a substantial risk of loss for a virtually unlimited number of potential victims seeking investments

or investment advice through the various forms of social media and website advertising Fields utilized. The Commission treats violations occurring within the context of fiduciary relations with particular seriousness and due regard for the relationship of trust and confidence. *James C. Dawson*, Investment Advisers Act Release No. 3057, 98 SEC Docket 3500, 2010 WL 2886183, at *3, 8-9 & n.16 (2010); *Don Warner Reinhard*, Exchange Act Release No. 63720, 100 SEC Docket 731, 2011 SEC LEXIS 158, at *21 n.27 (“[T]he importance of honesty for a securities professional is so paramount that we have barred individuals even when the conviction was based on dishonest conduct unrelated to securities transactions or the securities business”). As an investment adviser, Fields owed clients “an affirmative duty of utmost good faith ... as well as an obligation to employ reasonable care to avoid misleading his clients.” *Dawson*, 2010 WL 2886183, at *8. The evidence in this case demonstrates that Fields intentionally deceived prospective clients about his background, experience, expertise; connections to the Federal Reserve Bank of New York and the US Treasury and various well known financial institutions, not to mention extolling potential exponential returns from fictitious securities. Under these circumstances he should be permanently barred. *Steadman v. SEC*, 603 F.2d 1126, 1137 (5th Cir. 1979).²⁰

The sanctions sought herein are also appropriate because Fields has accepted no responsibility for the wrongfulness of his conduct. Indeed, he has steadfastly maintained he is in the process of refining his various SEC filings to continue doing what he has been doing. Furthermore, the selection of an appropriate sanction includes an assessment of the deterrent effect it will have in upholding and enforcing the standards of conduct in the securities business.

²⁰ A lack of a disciplinary history is not an impediment to imposing a bar for a Respondent’s first adjudicated fraud violation. *Jaimie L. Solow*, Initial Decisions Release No. 357, 2008 WL 4222151, at *4 (ALJ Sept. 16, 2008) (citing *Robert Bruce Lohmann*, 56 S.E.C. 573, 582 (2003) and *Martin R. Kaiden*, 54 S.E.C. 194, 209 (1999)).

See Schield Mgmt Co., 87 SEC Docket 695, 2006 WL 231642 at *8 & n.46 (Jan. 31, 2006); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). An industry bar against Fields will serve to deter future misconduct in the investment adviser industry.

C. Civil Penalties

Section 8A(g) of the Securities Act authorizes the Commission to impose a civil penalty upon a finding, with notice and opportunity for a hearing, that any person is violating or has violated any provision, rule or regulation issued under the Securities Act and that such penalty is in the public interest. Similarly, Section 21B of the Exchange Act provides that a civil penalty may be imposed in any proceeding instituted pursuant to Section 15(b)(4) of the Exchange Act on any person who has willfully violated the federal securities laws if such a penalty is in the public interest. Finally, Section 203(i) of the Advisers Act authorizes the Commission to impose a civil penalty against any person that has willfully violated any provision of the Securities Act, the Exchange Act or subchapter II of the Advisers Act or the rules or regulations thereunder if such penalty is in the public interest.

In considering whether a penalty is in the public interest of the Exchange Act and the Advisers Act, the Commission may consider six factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) previous violations; (5) deterrence; and (6) such other matters as justice may require. *See* Section 21B(c) of the Exchange Act and Section 203 (i)(3) of the Advisers Act. At least three of these factors strongly support the assessment of significant civil penalties in this case. First, Fields willfully violated multiple antifraud provisions of the securities laws, so his violation actions definitely “involved fraud [and] reckless disregard of a regulatory requirement” within the meaning of Section 8A(g) of the Securities Act, Section 21B of the Exchange Act and Section 203(i) of the Advisers Act. Second, deterrence requires penalties against Fields because

of his failure to acknowledge the wrongfulness of his violations or provide assurance against repetition. Penalties in addition to other sanctions ordered are necessary for the purpose of deterrence. *See, e.g.*, Section 203(i)(3)(E) of the Advisers Act; *see also* H.R. Rep. No. 101-616 (1990). Third, justice requires taking into account Fields' false representation of AFA as an SEC-registered investment adviser. That false and misleading representation, coupled with Fields' social media postings offering billions of dollars' worth of fictitious securities, created significant risk of harm to investors. Justice also requires taking into account Respondent's refusal to acknowledge his wrongdoing or to provide assurances against repetition.

Accordingly, a third-tier penalty is appropriate for Respondent's violations of the antifraud provisions of the Securities Act, the Exchange Act and the Advisers Act. *See Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 184 (2d Cir. 1976) ("Sanctions should demonstrate to the particular respondent, the industry, and the public generally that egregious conduct will merit a harsh response"). Such a penalty is warranted in view of Respondents' failure to acknowledge the wrongfulness of his conduct. *See SEC v. Robinson*, 2002 WL 1552049 (S.D.N.Y. July 16, 2002) ("The failure or a defendant to own up to his wrongdoing in the face of overwhelming evidence lends further support to the penalty"). Respondent's reliance on patently unreliable if not fraudulent hearing exhibits is additional reason to impose a third-tier penalty. *See SEC v. Milligan*, 436 F. App'x. 1, 3 (2d Cir. 2011) (defendant's "persistent denial of responsibility" and "blatant attempts to deceive the court in seeking to escape the consequences of his actions" supported imposition of third-tier penalty). Furthermore, though Respondent's violations did not result in substantial losses to other persons, those violations did create "a significant risk of substantial losses to other persons" within the meaning of Section 8A(g) of the Securities Act, Section 21B of the Exchange Act and Section 203(i) of the Advisers Act. *See, e.g., S.E.C. v.*

Huff, 758 F. Supp. 2d 1288, 1367 (S.D. Fla. 2010) (Under the Securities and Exchange Acts, “[a] court may enter third-tier penalties . . . when it finds that a defendant has committed a violation that has merely “created a significant risk of substantial losses to other persons”, although no person has actually incurred a loss.”); *SEC v. Bear, Stearns & Co., Inc.*, 626 F. Supp. 2d 402, 406 (S.D.N.Y. 2009) (“in SEC enforcement cases, harm to investors has little, if any, role in arriving at a disgorgement amount and, at most, may be one of several factors considered in the civil penalty matrix”).

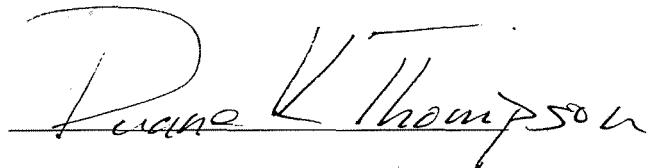
The penalty provisions, like most civil penalty statute, leave the precise unit of violation undefined. See Colin S. Diver, The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies, 79 Colum. L. Rev. 1435, 1440-41 (1970). The events at issue here may be considered as one course of action although it violated several statutes. Accordingly, a third-tier penalty of \$150,000 under the Securities Act is at least required for Respondent’s violations of the antifraud provisions of the Securities Act, the Exchange Act and the Advisers Act. In addition, treating Respondent’s violations of the books and records and recordkeeping requirements of the Advisers Act as a single course of action, a second-tier penalty of at least \$50,000 is appropriate for those violations. Accordingly, Respondent should be assessed total civil penalties in the amount of \$200,000.

CONCLUSION

For the foregoing reasons, and based upon the entire record in this matter, the Division respectfully requests that this Court rule in its favor on the allegations made in the OIP with regard to the misconduct discussed above and that the requested sanctions be imposed on the Respondent. The Division's Proposed Findings of Fact and Conclusions of Law are being filed simultaneously with this Post-Hearing Brief.

Dated: July 13, 2012

Respectfully submitted,

A handwritten signature in black ink, reading "Duane K. Thompson". The signature is written in a cursive style with a large initial "D" and "T".

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